

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

PATRICK L. MARTINEZ,

Plaintiff,

vs.

No. CIV 06-178 JP/LCS

CITY OF ALBUQUERQUE, PETE L.
DINELLI, DEPUTY CITY ATTORNEY,
DONALD F. HARRIS, ASSISTANT
CITY ATTORNEY, JOE MARTINEZ,
APD POLICE INSPECTOR,

Defendants.

MEMORANDUM OPINION AND ORDER

On May 16, 2006, Defendants Pete L. Dinelli, Donald Harris and Joe Martinez filed Defendants Pete Dinelli, Donald Harris and Joe Martinez' Motion to Dismiss (Doc. No. 6). In their motion, Defendants adopt by reference in its entirety the Motion and Memorandum in Support of Defendant City of Albuquerque's Motion to Dismiss (Doc. No. 5) filed April 18, 2006. Plaintiff has not filed a response in opposition to the motion to dismiss within the time permitted by the rules of this Court. D.N.M.LR-Civ. 7.6(a). Consequently, Plaintiff is deemed to have consented to the granting of the motion. D.N.M.LR-Civ. 7.1(b). In addition, the Court has determined that the motion should be granted on its merits. It is clear from the allegations in the Plaintiff's complaint combined with the documents attached to the Plaintiff's complaint that Plaintiff's claims are barred by a three-year statute of limitations. In New Mexico, the applicable statute of limitations is for personal injury actions and is for a period of three years. N.M.S.A. 1978 § 37-1-8 (2006). For actions brought under 42 U.S.C. § 1983, federal courts must apply the most analogous state law statute of limitations. The attachments to Plaintiff's complaint indicate that the actions taken by

Defendant City of Albuquerque and Defendants Pete Dinelli, Donald Harris and Joe Martinez of which Plaintiff complains occurred on February 7, 2003. Because Plaintiff did not file his complaint until more than three years later on March 7, 2006, the state three-year statute of limitations bars his claims against Defendants Pete Dinelli, Donald Harris and Joe Martinez.

IT IS THEREFORE ORDERED THAT:

1. Defendants Pete Dinelli, Donald Harris and Joe Martinez' Motion to Dismiss (Doc. No. 6) is granted; and
2. The claims of Plaintiff Patrick L. Martinez against Defendants Pete Dinelli, Donald Harris and Joe Martinez are dismissed with prejudice.



SENIOR UNITED STATES DISTRICT JUDGE